

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Gary Wayne Presley,)
Petitioner,) No. 8:13-cv-952-RMG
v.)
The State of South Carolina and Ronaldo)
Myers,)
Respondents.)

)

ORDER

The State of South Carolina and Ronaldo
Myers,

Respondents.

This matter is before the Court on the Report and Recommendation of the Magistrate Judge (“R&R”) recommending this Court grant Respondents’ motions to dismiss and for summary judgment and deny Petitioner’s motions for summary judgment, to amend, and to expedite. (Dkt. No. 79). For the reasons set forth below, the Court agrees with and adopts the R&R as the order of the Court.

Background

Petitioner, proceeding *pro se*, is a state prisoner seeking relief under 28 U.S.C. § 2241. Pursuant to the provisions of 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) DSC, this case was automatically referred to a United States Magistrate Judge for pretrial handling. Petitioner filed this Petition for writ of habeas corpus on April 8, 2013. (Dkt. No. 1). On June 7, 2013, Petitioner filed his motion for summary judgment. (Dkt. No. 24). Each Respondent filed a response to the motion (Dkt. Nos. 47, 48), and Petitioner filed a reply (Dkt. No. 55). On June 24, 2013, Myers filed a motion to dismiss. (Dkt. No. 28). On June 25, 2013, the Magistrate Judge issued an Order in accordance with *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of the summary judgment/dismissal procedure and of the possible consequences if he failed to adequately respond to the motion. (Dkt. No. 30). Petitioner filed

two responses in opposition to Myers' motion (Dkt. Nos. 38, 43), and Myers filed two replies (Dkt. Nos. 40, 54). On July 24, 2013, the State filed a motion for summary judgment. (Dkt. No. 45). The Magistrate Judge issued a Roseboro Order for that motion on July 25, 2013. (Dkt. No. 51). Petitioner filed two responses to the motion for summary judgment. (Dkt. Nos. 62, 69). Petitioner filed his motion to amend on September 9, 2013 (Dkt. No. 58), and his motion to expedite on October 25, 2013 (Dkt. No. 76). The Magistrate Judge then issued the present R&R on November 6, 2013. (Dkt. No. 79). Petitioner then filed timely objections to the R&R. (Dkt. No. 81).

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Discussion

Having carefully reviewed the record, the R&R, and Petitioner's objections, the Court agrees with and adopts the R&R as the order of the Court. (Dkt. No. 79). Through this habeas action, Petitioner challenges his extradition from Alabama to South Carolina. Petitioner's consistent argument, whether in his own motions, his responses to Respondents' motions, or in his objections to the R&R, is that he cannot be considered a fugitive from South Carolina for the purposes of extradition under the Constitution and federal law because he was never physically

present in South Carolina prior to being extradited there. *See* U.S. Const. art. IV, § 2, cl. 2; 18 U.S.C. § 3182. The Magistrate Judge ably addressed this argument in her R&R and concluded that Petitioner's habeas challenge is moot because he has already been brought into the custody of South Carolina, the demanding state. *Siegel v. Edwards*, 566 F.2d 958, 960 (5th Cir. 1978) (citing *Johnson v. Buie*, 312 F. Supp. 1349 (W.D. Mo. 1970)); *Harden v. Pataki*, 320 F.3d 1289, 1299 (11th Cir. 2003) (citing with approval *Siegel* and *Johnson*). The Court agrees with this conclusion.

Conclusion

As set forth above, the Court agrees with and adopts the R&R of the Magistrate Judge as the order of the Court. (Dkt. No. 79). Accordingly, the Court GRANTS Respondents' motions to dismiss (Dkt. No. 28) and for summary judgment (Dkt. No. 45) and DENIES Petitioner's motions for summary judgment (Dkt. No. 24), to amend (Dkt. No. 58), and to expedite (Dkt. No. 76).

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

November 26, 2013
Charleston, South Carolina